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**JUN 02 2004**

In re Application of :  
Sekiguchi et al. :  
Application No. 10/749,588 :  
Filed: 2 January, 2004 :  
Attorney's Docket No. FUR0005-DIV.7 :

**OFFICE OF PETITIONS**

ON PETITION

This is a decision on the petition filed on 20 April, 2004, under 37 CFR 1.182, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 2 January, 2004, with Figure 14 described in the specification as a part of the original disclosure.

The petition is granted.

The application was filed on 2 January, 2004.

Accordingly, on 15 April, 2004, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application, stating that the application had been accorded a filing date of 2 January, 2004, but that Figure 14 described in the specification appeared to have been omitted.

In response, on 20 April, 2004, the present petition and one sheet of drawing containing Figure 14 were filed. Petitioners argue that Figure 14 was filed with the other application papers on 2 January, 2004, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an "Office date" stamp of 2 January, 2004, and identifies the application by the first named inventor's name, invention title, and attorney docket number, and acknowledges receipt of, *inter alia*, "Drawings-49 sheets - 53 total figures". Petitioners request that the application, including one sheet of drawings containing Figure 14, be accorded a filing date of 2 January, 2004.

A review of the record reveals that 48 sheets of drawings were received on 2 January, 2004. No Figure 14 is located among the drawing figures received on that date. However, the evidence is convincing that the application papers deposited on 2 January,

2004, included one (1) sheet of drawings containing Figure 14, which was subsequently misplaced in the Office. Therefore, the application, including one (1) sheet of drawings containing Figure 14, is entitled to a filing date of 2 January, 2004.

The "Notice" mailed on 15 April, 2004, is vacated.

In view of the above, the petition is granted. The petition fee of \$130.00 is unnecessary and will be refunded to counsel's deposit account, No. 50-1390.

The application will be processed with the copy of Figure 14 supplied on 20 April, 2004, as a part of the original disclosure.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 2 January, 2004, using the application papers filed on that date, and the copy of drawing Figure 14 supplied with the present petition.

Telephone inquiries should be directed to the undersigned at 703-308-6918.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

**UNITED STATES PATENT & TRADEMARK OFFICE**  
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND											
1 Date of Request: <u>6/1/04</u>		2 Serial/Patent # <u>10 749 588</u>									
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT							
	Filing			\$							
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1051	Petition		4/26/04	\$ 130							
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	Cert of Correction/Terminal Disc.			\$							
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7 TOTAL AMOUNT OF REFUND			\$ 130								
8 TO BE REFUNDED BY:											
10 REASON:		Treasury Check									
	Overpayment	X	Credit Deposit A/C #:								
	Duplicate Payment		9 <table border="1" style="display: inline-table; text-align: center; width: 150px;"><tr><td>5</td><td>0</td><td>--</td><td>1</td><td>3</td><td>9</td><td>0</td></tr></table>		5	0	--	1	3	9	0
5	0	--	1	3	9	0					
X	No Fee Due (Explanation):										
PET DUE TO PTO ERROR											
11 REFUND REQUESTED BY:											
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/749,588	01/02/2004	Takuya Sekiguchi	FUR0005-DIV.7

SHAW PITTMAN LLP  
 1650 TYSONS BOULEVARD  
 MCLEAN, VA 22102



CONFIRMATION NO. 9005

FORMALITIES LETTER



\*OC000000012363021\*

Date Mailed: 04/15/2004

## NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has been accorded to the above-identified nonprovisional application papers; however, the following item(s) appear to have been omitted from the application:

- Figure(s) 14 described in the specification.

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit must be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date must be filed within **TWO MONTHS** of the date of this Notice.

Applicant is advised that generally the filing fee required for an application is the filing fee in effect on the filing date accorded the application and that payment of the requisite basic filing fee on a date later than the filing date of the application requires payment of a surcharge (37 CFR 1.16(e)). To avoid processing delays and payment of a surcharge, applicant should submit any balance due for the requisite filing fee based on the later filing date being requested when submitting the omitted items(s) and the petition (and petition fee) requesting the later filing date.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel all complete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabeled drawing figures is required.

04/21/2004 REINTER 0000036 10749588

01 FC:1051

130.00 OP

Adjustment date: 06/02/2004 AKELLEY  
 04/21/2004 H8UTENAL 00000036 10749588

01 FC:1051

-130.00 OP

Repl. Ref.: 06/02/2004 AKELLEY  
 Date: 04/21/2004 Name/Number: H8UTENAL 00000036  
 FC: 9204

04/21/2004 H8UTENAL 00000036 10749588

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130.00 OP